Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1979

No. 79-428

GUY A. HUNT,

Petitioner,

vs.

NORTHWEST AIRLINES, INC.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eight Circuit entered in this case June 18, 1979.

OPINIONS BELOW

The District Court for the District of Minnesota granted the Respondent's motion for summary judgment and dismissed the Complaint and Petition for Review of Petitioner without opinion by Order entered December 13, 1978.

The decision of the Eighth Circuit Court of Appeals affirming the Order of the District Court was entered on June 18, 1979, and is reported unofficially at 600 F.2d 176, 86 CCH Lab. Cas. P11,388, 15 Av. Cas. 17,654, and 101 LRRM 2647.

JURISDICTION

Petitioner believes that this Court has jurisdiction to review the subject judgment of the Court of Appeals pursuant to 28 U.S.C. § 1254 (1).

THE QUESTION PRESENTED

The Petitioner's action is one to seek federal judicial review of an adverse employment arbitration decision. The subject arbitration was mandated by the terms of the Air Carrier Amendments to the Railway Labor Act, 45 U.S. C. § 151 *et seq*. The Court of Appeals, and by implication the District Court herein, concluded that, in the absence of fraud or corruption in the statutorily mandated arbitration procedure itself, no federal jurisdiction existed to review the arbitration decision. Petitioner Hunt does not at this juncture claim that there was any fraud or corruption, or denial of due process, in the arbitration proceeding. His only claim is that the substantive decision of the arbitration panel was incorrect in view of the facts presented to it, and that there should lie federal jurisdiction to review and amend said arbitration award.

Therefore, the question presented is whether your Petitioner should have a right to federal judicial review of the substantive correctness of an arbitration decision made pursuant to the provisions of the Air Carrier Amendments to the Railway Labor Act, 45 U.S.C. § 151 *et seq*.

STATUTES INVOLVED

The Railway Labor Act, 45 U.S.C. § 151 *et seq*., is an exceedingly lengthy statute. The pertinent section of the Act is 45 U.S.C. § 184, which mandates the establishment of

the arbitration system which took jurisdiction of Petitioner's employment grievance. The text of § 184 is set forth in full in the appendix hereto at A-8.

STATEMENT OF THE CASE

This action was commenced in the United States District Court for the District of Minnesota by Petitioner Guy A. Hunt ("Hunt") to seek federal judicial review of an employment arbitration decision rendered by a System Board of Adjustment constituted pursuant to the mandate of 45 U.S.C. § 184. Jurisdiction in the District Court was founded upon 28 U.S.C. §§ 1331 and 1337, and upon the Railway Labor Act, 45 U.S.C. § 151 *et seq*. A summary of the facts giving rise to this action is as follows.

Hunt was employed as a pilot by Respondent Northwest Airlines, Inc., from March 3, 1969, until he was discharged on March 26, 1976, on the alleged grounds of insubordination and of falsely making a claim for sick leave. Hunt, through his union, the Air Line Pilots Association, demanded and pursued the adminstrative review of his discharge by Northwest Airlines' management provided by the obtaining collective bargaining agreement. Hunt's discharge was affirmed by the Respondent's management.

Hunt thereupon invoked his right to arbitrate the validity of his discharge. Upon demand by Hunt's union, there was convened a panel of the System Board of Adjustment provided by the collective bargaining agreement, pursuant to 45 U.S.C. § 184. As provided by the collective bargaining agreement, the System Board of Adjustment constituted in Hunt's case comprised a company representative, a representative of Hunt's union, and a third, neutral member. Both Hunt and Northwest Airlines presented voluminous

and lengthy testimony to the System Board of Adjustment. Ultimately, the System Board denied Hunt's grievance and upheld his discharge by Northwest Airlines.

Hunt then instituted the present action in the District Court. The substance of the allegations presented to the District Court are well summarized in the opinion of the Court of Appeals. In brief, Hunt claims that the System Board erred when it held that Hunt's discharge was for "just cause," and when it concluded that the evident animosity against Hunt on the part of his superiors at Northwest Airlines was irrelevant to its decision. Hunt further argued to the Courts below that he was denied his right of contractual due process by Northwest Airlines by their denomination of Hunt's failure to obey an order of his superiors as "insubordination", when in fact Hunt had refused to obey the order only because he wished to consult an attorney before complying. It is Hunt's contention in this case that federal judicial review should exist to review the substantive correctness of the decision of the System Board of Adjustment, which in effect ratified and condoned this denial of due process by Hunt's employer, and which incorrectly concluded that Hunt's discharge was otherwise justified.

As noted, the District Court granted summary judgment dismissing Hunt's action without opinion in December of 1978. The Court of Appeals affirmed the District Court's Order in an opinion filed June 18, 1979.

ARGUMENT

Petitioner does not take issue with the Court of Appeals' analysis of precedent. It is clear that Petitioner has asked the lower courts, and now petitions this Court, to depart

from conventional interpretations of the subject Railway Labor Act provisions concerning judicial review of arbitration awards. Petitioner would note to the Court that it has never considered this issue; indeed, the only decision of this Court cited by the Court of Appeals, *International Association of Machinists v. Central Airlines, Inc.*, 372 U.S. 682 (1963) may properly be read only for the proposition that federal jurisdiction lies to enforce arbitration awards under the subject statute. There is no decision of this Court which indicates the proper scope of judicial review.

Petitioner's principal argument in favor of extending the scope of review to comprehend his allegations in this matter is as follows. It is clear from the legislative history of the 1936 Air Carrier Amendments to the Railway Labor Act that Congress intended that there be established a National Board of Adjustment, with nationwide jurisdiction, to supervise arbitration arising under 45 U.S.C. § 184. This National Board is provided by 45 U.S.C. § 185, set forth in Appendix C hereto.

While the wording of that statute does not make the establishment of the National Board mandatory, it is clear that Congress intended and understood that the Board would soon come into being. The only extant committee report on the Air Carrier Amendments evidences the clear intention and understanding that the National Board would be established soon after enactment of the Amendment. The committee report provides that under the Air Carrier Amendment:

> This new adjustment board *will be created and will function* in the same manner as the railway board, excepting that it need not be established immediately

> but only when deemed necessary by the Mediation Board. The reason for this permissive delay in its formation is that there is nothing for such a board to do until [airline] employment contracts have been completed, and there are no such contracts in operation now.
> H.R. Rep. No. 2243, 74 Cong., 2d Sess. 1 (1936) (emphasis added)

Therefore, it is abundantly clear that Congress intended that, soon after the 1936 passage of the Air Carrier Amendments, there would be established an organization of nation-wide jurisdiction to take cognizance of minor disputes among air carriers and their employees. As mentioned, such board has not been created. Notwithstanding this, it must be inferred that Congress intended that there be nation-wide uniformity in interpretation and disposition of such disputes. This congressional intent is frustrated if judicial review of arbitration awards is not allowed, since there is no other competent tril unal of national scope and jurisdiction.

CONCLUSION

The Court of Appeals in this case has decided an important question of federal law which has not been, but should be, decided by this Court. Because of the very profound consequences of the arbitration decision to Petitioner, and because the Court of Appeals and the District Court declined to give effect to the clear intention of Congress concerning uniformity of arbitration decisions under the subject statute, a Writ of Certiori should issue.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 79-1157

Guy A. Hunt,

Plaintiff-Appellant,

v.

Northwest Airlines, Inc.,

Defendant-Appellee.

Appeal from the United States District Court for the District of Minnesota

Submitted: June 15, 1979

Filed: June 18, 1979

Before HEANEY, BRIGHT and STEPHENSON, Circuit Judges.

PER CURIAM.

Plaintiff Guy A. Hunt initiated this lawsuit to obtain judicial review of the System Board of Adjustment's decision upholding the termination of his employment. The district court[1] granted defendant Northwest Airlines,

[1]The Honorable Miles W. Lord, United States District Judge for the District of Minnesota.

Inc.'s (NWA) motion for summary judgment and dismissed the complaint with prejudice. Hunt appeals and urges this court to broaden the scope of review of arbitration decisions under 45 U.S.C. § 184.[2] Because Hunt's claims are not within the well-established, limited scope of review afforded system board decisions under 45 U.S.C. § 184 and because we decline to broaden the scope of review, we affirm the grant of summary judgment in favor of NWA.

On March 16, 1976, NWA management in Minneapolis received information that Pilot Hunt had obtained a prescription for the drug Percodan on the previous day. Percodan's usage is regulated, and a pilot is prohibited from taking the drug within twenty-four hours of flying. Because NWA management believed that Hunt might have violated this regulation, they called him in Milwaukee where he was on a layover. Hunt reacted angrily and hung up the phone when his supervisors ordered him to report for a medical examination which would determine whether or not he had violated the regulation. Hunt then contacted two attorneys, who advised him to submit to the exam; in the meantime NWA left a message at the front desk grounding him. Hunt did not call his supervisors and indicate that he would take the exam. Instead he called crew control in Minneapolis and asked to be placed on the sick list.

NWA terminated Hunt's employment for failure to cooperate and for falsifying a claim for sick leave. Hunt initi-

[2]Section 184 is one of the 1936 Air Carrier Amendments, 45 U.S.C. §§ 181-188, to the Railway Labor Act, 45 U.S.C. § 151 *et seq*. Section 184 provides for the establishment of system, group or regional boards or adjustment which hear and decide disputes between airlines and their employees.

ated and completed the grievance procedures established in the collective bargaining agreement between NWA and his union. Through these procedures the issue of his discharge was submitted to the System Board of Adjustment, the establishment of which is mandated by 45 U.S.C. § 184. On August 9, 1976, after a hearing on the merits involving extensive testimony, the System Board denied Hunt's claim and upheld the employment termination. Hunt's collective bargaining agreement provided in Section 21(J) that the System Board's decision "shall be final, binding and conclusive."

On August 8, 1978, Hunt instituted this suit and urged the court to review the validity of his discharge and the denial of his grievance by the System Board. Two of Hunt's claims related to the merits of the System Board's award. First, he claimed that his discharge was motivated by the personal hostility of his supervisors, and, secondly, he claimed that his discharge was without just cause. In addition, Hunt contended that he was deprived of his due process right to counsel when he was directed to appear for a medical exam. NWA moved for summary judgment and at the oral argument on this motion contended that the undisputed facts failed to raise issues within the narrow scope of review accorded arbitration awards. The district court granted summary judgment without opinion.

Hunt concedes on appeal that courts have not assumed jurisdiction to review the substantive correctness of board of adjustment awards under section 184 and that courts have considered due process claims such as his to be merged in the decision of the board of adjustment. Nevertheless,

he argues that the legislative history of the Air Carrier Amendments, 45 U.S.C. §§ 181-188, supports his contention that board of adjustment decisions under section 184 should have a broader scope of judicial review than that allowed under similar statutory provisions governing the National Railway Adjustment Board (NRAB) decisions under section 153.

The 1936 Air Carrier Amendments extended all the provisions of the Railway Labor Act, 45 U.S.C. § 151 *et seq.*, to the airlines except 45 U.S.C. § 153. Section 153 provides for the establishment and powers of both the NRAB and the railroad system, group or regional voluntary agreement boards. The analogous provision for the airline industry is section 184, which requires the establishment of system, group or regional boards of adjustment until a permanent Air Transportation Adjustment Board is created. The National Mediation Board was given the discretion of determining when the creation of the National Air Transportation Adjustment Board was necessary, 45 U.S.C. § 185, but to date this National Board has not been established. The System Board of Adjustment, which upheld Hunt's discharge, was established in compliance with the provisions of section 184.

Hunt's interpretation of the history of the 1936 amendment is that Congress intended the establishment of the National Air Board to closely follow the passage of this 1936 amendment. Since this organization of nationwide jurisdiction has not been created for the airlines as it was for the railways, Hunt argues that to avoid frustrating the congressional intent the courts should broaden the scope of

judicial review of section 184 since they are the only other established tribunal of nationwide jurisdiction.

We do not believe that the legislative history mandates a different scope of review for section 184 than that allowed under section 153. The Supreme Court in *International Ass'n of Machinists v. Central Airlines, Inc.*, 372 U.S. 682, 695 (1963), *quoting from Washington Terminal Co. v. Boswell*, 124 F.2d 235, 244 (D.C. Cir. 1941), determined that legislative history revealed the congressional intent that airline system board awards would "'have legal effect, not merely that of private advice.' " The Court stated that in passing the 1936 amendments Congress intended to extend to the airline industry the same benefits and obligations applicable to the railroad industry. *Id.* at 685. Therefore, congressional intent requires identical court treatment of airline board decisions under section 184 and railroad board decisions under section 153, and this has been the continuing policy of the courts. *Rossi v. Trans World Airlines*, 350 F. Supp. 1263, 1269 (C.D. Cal. 1972), *aff'd*, 507 F.2d 404 (2d Cir. 1974); *see Eastern Air Lines, Inc. v. Transport Workers Union Local 553*, 580 F.2d 169 (5th Cir. 1978); *Giordano v. Modern Air Transport*, 504 F.2d 882 (5th Cir. 1974); *Rosen v. Eastern Air Lines, Inc.*, 400 F.2d 462 (5th Cir. 1968), *cert. denied*, 394 U.S. 959 (1969); *Northwest Airlines, Inc. v. Air Line Pilots Ass'n, Int'l*, 373 F.2d 136 (8th Cir.), *cert. denied*, 389 U.S. 327 (1967). This is a sound policy because "[t]he main function of arbitration and of System Adjustment Boards is to serve as a 'substitute for and not a prelude to litigation.' " *Rossi v. Trans World Airlines, supra*, 350 F. Supp. at

1273, *quoting from Farris v. Alaska Airlines, Inc.*, 113 F. Supp. 907, 908 (N.D. Wash. 1953).

Hunt also argues that a judicial trend is emerging which supports a broader scope of judicial review. His "trend" is based upon two cases, *Merchants Dispatch Transp. Corp. v. Systems Fed'n No. 1 Ry. Employees Dep't*, 551 F.2d 144 (7th Cir. 1977), and *Employees Protective Ass'n v. Norfolk & W. Ry.*, 511 F.2d 1040 (4th Cir. 1975). Neither case supports a change toward a broader judicial review of airline board decisions under section 184. *Merchants Dispatch* merely determines that under 28 U.S.C. §§ 1331 and 1337 the federal courts have jurisdiction to apply the same limited review to the decisions of the special board of adjustment established under 45 U.S.C. § 153 Second as is applied to the decisions of the NRAB under section 153 First and the airline boards under section 184. *Employees Protective Ass'n* reached the same conclusion as *Merchants Dispatch* except the court based its decision approving jurisdiction solely on 28 U.S.C. § 1337. Therefore, we apply the traditional, narrow scope of review applied to awards under section 184 in determining whether any of Hunt's claims should be reviewed by the court system.

Hunt claims that his discharge was motivated by the personal hostility of his supervisors and was without just cause. However, when an airline adjustment board has determined that a discharge was justified, the case has been determined on its merits and the board's decision is final and binding on the courts. *Rosen v. Eastern Air Lines, Inc.*, *supra*, 400 F.2d at 463; *Rossi v. Trans World Airlines*, *supra*, 350 F. Supp. at 1272. Independent review of these

claims in a federal court is not appropriate when the same claims were submitted to the system board for a full hearing on the merits.

Hunt further claims that he was denied due process by his employer, NWA. This claim is merged with the decision of the system board because courts have jurisdiction to review board awards only where there has been a denial of due process "*by some conduct of the * * * Board.*" *Edwards v. St. Louis-San Francisco R.R.*, 361 F.2d 946, 953 (7th Cir. 1966); *see Giordano v. Modern Air Transport*, *supra*, 504 F.2d 882; *McDonald v. Penn Central Transp. Co.*, 337 F. Supp. 803 (D. Mass. 1972). Hunt's due process allegation is directed toward his employer, not toward any conduct of the system board; therefore, judicial review is foreclosed.

Because Hunt has failed to assert any claims within the narrow scope of review applied to system board decisions under 45 U.S.C. § 184, we affirm the district court's grant of summary judgment.

Affirmed.

A true copy.

Attest:

Clerk, U.S. Court Of Appeals, Eighth Circuit

APPENDIX B

45 U.S.C. § 184 *System, group, or regional boards of adjustment.*

The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on April 10, 1936 before the National Labor Relations Board, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with a full statement of the facts and supporting data bearing upon the disputes.

It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of sections 181 to 188 of this title, to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 153 of this title.

Such boards of adjustment may be established by agreement between employees and carriers either on any individual carrier, or system, or group of carriers by air and any class or classes of its or their employees; or pending the establishment of a permanent National Board of Adjustment as hereinafter provided. Nothing in sections 151 to 163 and 181 to 188 of this title shall prevent said carriers

by air, or any class or classes of their employees, both acting through their representatives selected in accordance with provisions of sections 181 to 188 of this title, from mutually agreeing to the establishment of a National Board of Adjustment of temporary duration and of similarly limited jurisdiction.

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* * *

APPENDIX C

45 U.S.C. § 185. *National Air Transport Adjustment Board.*

When, in the judgment of the National Mediation Board, it shall be necessary to have a permanent national board of adjustment in order to provide for the prompt and orderly settlement of disputes between said carriers by air, or any of them, and its or their employees, growing out of grievances or out of the interpretation or application of agreements between said carriers by air or any of them, and any class or classes of its or their employees, covering rates of pay, rules, or working conditions, the National Mediation Board is empowered and directed, by its order duly made, published, and served, to direct the said carriers by air and such labor organizations of their employees, national in scope, as have been or may be recognized in accordance with the provisions of sections 151 to 163 and 181 to 188 of this title, to select and designate four representatives who shall constitute a board which shall be known as the "National Air Transport Adjustment Board." Two members of said National Air Transport Adjustment Board shall be selected by said carriers by air and two members by the said labor organizations of the employees, within thirty days after the date of the order of the National Mediation Board, in the manner and by the procedure prescribed by section 153 of this title for the selection and designation of members of the National Railroad Adjustment Board. The National Air Transport Adjustment Board shall meet within forty days after the date of the order of the National Mediation Board directing the

selection and designation of its members and shall organize and adopt rules for conducting its proceedings, in the manner prescribed in section 153 of this title. Vacancies in membership or office shall be filled, members shall be appointed in case of failure of the carriers or of labor organizations of the employees to select and designate representatives, members of the National Air Transport Adjustment Board shall be compensated, hearings shall be held, findings and awards made, stated, served, and enforced, and the number and compensation of any necessary assistants shall be determined and the compensation of such employees shall be paid, all in the same manner and to the same extent as provided with reference to the National Railroad Adjustment Board by section 153 of this title. The powers and duties prescribed and established by the provisions of section 153 of this title with reference to the National Railroad Adjustment Board and the several divisions thereof are conferred upon and shall be exercised and performed in like manner and to the same extent by the said National Air Transport Adjustment Board, not exceeding, however, the jurisdiction conferred upon said National Air Transport Adjustment board by the provisions of sections 181 to 188 of this title. From and after the organization of the National Air Transport Adjustment Board, if any system, group, or regional board of adjustment established by any carrier or carriers by air and any class or classes of its or their employees is not satisfactory to either party thereto, the said party, upon ninety days' notice to the other party, may elect to come under the jurisdiction of the National Air Transport Adjustment Board.